IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3446 of 2007()

ST.1090/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOZHIKODE

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PETITIONER: ACCUSED

K.P.VINOD, S/O. KANIYATH PUTHAKANDI
CHOYI, RESIDING AT VINOD VILLA, KUNNAMANGALAM,
CALICUT.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: COMPLAINANT AND STATE

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1. P.CHANDUKUTTY, S/O. KUMARAKUTTY,
RESIDING AT PUTHIYADATH, P.C.S.SADANAM,
KANNANKARA P.O., CHELANNUR, CALICUT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007 ALONG WITH CRMC.NO.3447 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.3446 & 3447 of 2007

Dated this the 16th day of November, 2007

O R D E R

The petitioner faces indictment in 2 separate prosecutions, both under Section 138 of the Negotiable Instruments Act, but initiated by different complainants. Those complainants are father in law and son in law respectively. The allegation is that the petitioner had issued cheques for discharge of liability and the said cheques have been dishonoured on the ground of insufficiency of funds. Cognizance has been taken. Both cases are now pending before the learned Judicial Magistrate of the First Class-I, Kozhikode.

2. The petitioner has advanced a case that these cheques remain in the hands of the complainants on account of a fraud played by the complainants. The petitioner, it is submitted, had filed a private complaint, which was referred to the police under Section 156 (3) Cr.P.C. Investigation has been conducted. Final report has been filed. Cognizance has been taken alleging the offences punishable, inter alia, under Sections 420 and 468 I.P.C by the respective complainants and their daughter/wife. That case was pending before another court. The petitioner had applied for transfer and that case after transfer is now pending before the same court. Thus all the 3 cases are pending before the same court.

3. When the learned Magistrate wanted to take up the prosecutions under Section 138 of the Negotiable Instruments Act for trial, the petitioner made a request that there may be a direction that all the 3 cases shall be taken up for trial and disposal together. By the impugned orders, the said request has been turned down by the learned Magistrate.

4. The learned counsel for the petitioner submits that the allegations in the cases are in the nature of allegations and counter allegations. Principles that govern the disposal of a case and a counter case must apply to the disposal of these cases also, submits the learned counsel for the petitioner. The defence in the 2 prosecutions under Section 138 of the Negotiable Instruments Act is the case of the defacto complainant in the prosecution under Section 420 I.P.C. Whether they can be described as a case and a counter case, it is evident that the allegations are in the nature of allegations and counter allegations in these cases.

5. I am satisfied that there is merit in the submission of the learned counsel for the petitioner that the interests of justice demand that the principles governing the disposal of a case and a counter case must apply on all fours for the disposal of these cases also. The mandate that a case and a counter case must be disposed of by the same judicial mind is not a prescription of the Code, but only a

precedential insistence in the interests of justice. I am satisfied that there is every reason in these cases also in the interests of justice to insist that all the 3 cases must be disposed of by the same judicial person. A direction to that effect shall only advance the interests of justice. I am satisfied that the prayer in these petitions can be allowed.

6. I have considered the question whether it is necessary to wait for issue and return of notice to the respective complainants/accused in the prosecution under Section 420 I.P.C. I take the view that it is not necessary to wait for issue and return of notice to those respondents considering the nature of the relief that I propose to grant.

In the result:

a) These Crl.M.Cs are, in these circumstances, allowed.

b) The impugned orders are set aside;

c) The learned Magistrate is directed to post C.C.Nos.1089 of 2003, 1090 of 2003 and C.C.No.87 of 2006 for trial and dispose them of simultaneously reckoning them as cases in the nature of a case and a counter case.

(R.BASANT, JUDGE)

rtr/-